

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

75-1356

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

- against -

WILLIAM RAMSDEN,

Appellant.

DOCKET #75-1356

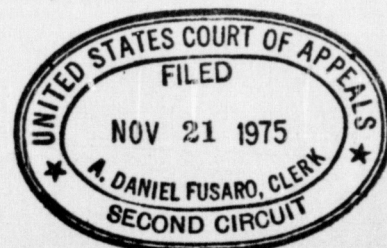
75-1356

APPELLANT'S APPENDIX

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK.

STANLEY SCHIMMEL

Attorney for Appellant
32 Court Street
Brooklyn, N. Y. 11201
(212) 625-1200



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A P P E N D I X

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA

INDICTMENT

- against -

AUDREY JOSEPH, JAMES GLASS
and WILLIAM L. RAMSDEN,

Cr. No. 73 CR 1076
(T. 21, USC, §841(a)(1),
§846; T. 18, USC, §2)

Defendants.

12-20-73

- - - - - X

Tama, J

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 15th day of October 1973, within the Eastern District of New York, the defendant AUDREY JOSEPH, the defendant JAMES GLASS, and the defendant WILLIAM L. RAMSDEN, knowingly, intentionally and unlawfully did possess with intent to distribute approximately four (4) ounces of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, §841(a)(1) and Title 18, United States Code §2.)

COUNT TWO

On or about the 15th day of October 1973, within the Eastern District of New York, the defendant AUDREY JOSEPH, the defendant JAMES GLASS, and the defendant WILLIAM L. RAMSDEN, knowingly, intentionally and unlawfully did attempt to distribute approximately four (4) ounces of cocaine hydrochloride, a Schedule II narcotic drug controlled substance, in violation of Title 21, United States Code, §841(a)(1). (Title 21, United States Code, §846 and Title 18, United States Code §2.)



A TRUE BILL.

FORWARDED.

ACTING UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

No. _____

UNITED STATES DISTRICT COURT

EASTERN District of NEW YORK

Criminal Division

THE UNITED STATES OF AMERICA

vs.

AUDREY JOSEPH, JAMES GLASS,

WILLIAM L. RANSDEN,

INDICTMENT

(T.21, USC, §841(a)(1), §846;
T.18 USC, §2)

A true bill,

Presented.

*Filed in open court this _____ day
of _____, A. D. 19____*

Clerk.

Subj. § _____

73 CR1076

4

DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
7-75	Before NEAHER, J - case called - Defts JOSEPH & GLASS present with attys - deft RAMSEN not present - his counsel was present - case set for trial May 27, 1975 at 10:00 am.		
27-75	Before NEAHER, J - case called - defts present with attys - deft GLASS withdraws plea of not guilty and enters a plea of guilty to count 1 - sentence adjd without date - bail contd. Deft JOSEPH withdraws plea of not guilty and enters a plea of guilty to counts 1 and 2 - sentence adjd without date - bail contd - both defts advised of their rights by the court. Case adjd to June 30, 1975 as to deft RAMSDEN., for trial at 10:00 am.		
30-75	Before NEAHER, J - case called - deft RAMSDEN & counsel Stanley Schimmel present - adjd to July 28, 1975 at 10:00 am for trial		
18-75	Before NEAHER, J - case called - defts JOSEPH & GLASS present with attys - deft JOSEPH sentenced pursuant to 18:4208(b) for study and report in 30 days. Deft to surrender to U.S. Marshal by 7-21-75 by 12:00 Noon. Deft GLASS sentenced under 18:4208(a)(2) to 2 years imprisonment with 3 years special parole term. Deft is also to pay a fine of \$1,000 - court recommends Allenwood, Pa. as place of incarceration. Execution of sentence is stayed until Aug. 18, 1975 at which time deft is to surrender to the U.S. Marshal by 12 Noon - On motion of AUSA Schall count 2 is dismissed.		
18-75	Judgment and Commitments filed for defts JOSEPH & GLASS - certified copies to Marshal for both defts.		
21-75	By NEAHER, J - Order releasing bail filed (JOSEPH)		
22/75	By NEAHER, J.- Order of surrender filed (GLASS)		
1-23-75	Certified copy of Judgment & Commitment ret'd and filed - deft JOSEPH delivered to WHD, Rikers Island awaiting removal to FRW, Alderson, West Va. for study.		
28/75	Before NEAHER, J.- Case called- Deft and counsel present-Deft Ramsden moves to suppress the admissability of certain portions of tapes- motion argued- decision reserved- trial ordered and begun-Trial contd to 7/29/75 at 10:00 A.M.		
29-75	Before NEAHER, J a- case called - deft RAMSDEN & counsel Stanley Schimmel present - trial resumed - defts motion to suppress certain portions of the taped conversation - granted and denied -court rules that tape may be used to the extent that it is audible -Jurors selected and sworn - Govt opens - deft opens - Trial contd to July 30, 1975.		

73 CR-1076

CRIMINAL DOCKET

DATE	PROCEEDINGS
7-30-75	Before NEAHER, J - case called - deft & counsel present (RAMSDEN & counsel Stanley Schimmel) trial resumed - Trial contd to July 31, 1975.
7-31-75	Before NEAHER, J - case called - deft RAMSDEN & counsel S. Schimmel present - trial resumed - defts motion for judgment of acquittal - decision reserved - deft rests - Govt rests - Jury retires to deliberate - trial contd to 8-1-75
7-31-75	By NEAHER, J - Order fax of sustenance filed
8/1/75	Before NEAHER, J. - Case called- Deft GLASS not present-counsel present deft's motion for extension of time to surrender- granted on condition that the Probation Dept and U.S. Marshal approve
8/1/75	Certified copy of Judgment and Commitment ret'd and filed- deft delivered to Womens Reformatory at Alderson W.Va (JOSEPH)
8/1/75	Before NEAHER, J. - Case called- Deft RAMSDEN and counsel present- Trial resumed-Jury resumes deliberations-Jury returns and renders a verdict of guilty on counts 1 and 2- jury discharged- deft's bail contd-case without date for sentence- Trial concluded
8/1/75	By NEAHER, J. - Order of sustenance filed
8-4-75	3 stenographers transcripts filed (pgs 1 to 371) (RAMSDEN)
8/5/75	Stenographer's transcript of 8/1/75 filed.
8-8-75	Certified copy of Judgment & Commitment ret'd and filed - deft GLASS delivered to Allenwood, Pa.
8-25-75	Stenographers transcript filed dated May 27, 1975.
9-17-75	Before NEAHER, J - case called - deft JOSEPH & counsel Bryan Rappaport present - Imposition of sentence is suspended and the deft is placed on probation for 5 years. Special conditions of probation are that the deft continue with her education and psychotherapy.
9-17-75	Judgment and Order of Probation filed - certified copies to Probation (JOSEPH)
10-3-75	Before NEAHER, J - case called - deft RAMSDEN & counsel Stanley Schimmel by Robert Straus present - deft sentenced to imprisonment for 3 years on each of counts 1 and 2 to run concurrently pursuant to 18:3651 - to serve 6 months and balance of 30 months is suspended and the deft is placed on probation for 3 years with special parole term of 5 years. Court recommends imprisonment at Allenwood, Prison Camp. Execution of sentence is stayed until 10-17-75 at which time the deft is to surrender at the particular prison by 4:

PROCEEDINGS

- Deft advised by the court of his right to appeal and is granted leave to appeal in Forma Pauperis. Financial Affidavit filed and Form A filed. Court directs the Clerk to file Notice of Appeal on behalf of the deft.
- 8-75 Judgment and Commitment and Order of Probation filed - certified copies to Probation and Marshal.
- 8-75 Notice of Appeal filed (without fee as to deft RAMSDEN)
- 9-75 Docket entries and duplicate of Notice mailed to the C of A together with Form A (RAMSDEN)
- 10/3/75 Stenographers Transcript dated 7/31/75 filed
- 10/14/75 Order received from court of appeals and filed that record be docketed on or before 10/22/75
- 11-15-76 Voucher for Expert Services filed. (RAMSDEN)
- 11-16/65 By NEAHER, J.- Order filed that surrender dated extended to 10/24/75
- 11-20/75 Certified copy of Judgment and Commitment ret'd and filed- deft to surrender to F.P.C. at Allenwood Pa on 10/24/75
- 11-1-13-75 Notice of Motion filed for reduction of sentence imposed (Class)

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Charge of the Court

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1
2 THE COURT: Members of the Jury, we are now
3 at the stage of trial where you are about to under-
4 take your final functions as jurors. Your duty is
5 a serious and important one. In performing it, you
6 actively share with the Court the responsibility of
7 administering justice according to law and the
8 evidence in the case.

9 Your Oath as jurors obliges you to discharge
10 this final task in an attitude of complete fairness
11 and impartiality, and as was emphasized by me when
12 you were selected as jurors, without bias or prejudice,
13 for or against the Government or the defendant as
14 parties to this controversy.

15 This case has been of short duration. The fact
16 that the trial has been so brief in no respect reflects
17 its relative importance. Every case, whether it takes
18 a day, a week or a month, is important. The case is
19 important to the Government, since the enforcement of
20 criminal laws is of prime importance to the welfare of
21 the community.

22 Obviously, it is equally important to the de-
23 fendant who is charged with a serious crime, and has
24 the right to receive a fundamentally fair trial.

25 The community has an interest in that, too.

2 1
2 Let me add, the fact that the Government is a
3 party entitles it to no greater consideration than
4 that accorded to any other party in a litigation.
5 By the same token, it is entitled to no less consider-
6 ation.

7 All parties, Government and individuals alike,
8 stand as equals alike before the bar of justice.

9 Your final role is to decide and pass upon the
10 fact issues in the case.

11 You are the sole and exclusive judges of the
12 facts.

13 You determine the weight of the evidence. You
14 appraise the credibility of the witnesses. You draw
15 the reasonable inferences from the evidence. You re-
16 solve such conflicts as there may be in the evidence.

17 I shall later tell you how to determine the
18 credibility of the witnesses. My final function is
19 to instruct you on the law, and it is your duty to
20 accept these instructions as to the law and to apply
21 them to the facts as you may find them.

22 With respect to any fact matter, it is your
23 recollection, and yours alone, that governs. As I
24 have already told you, anything that counsel either
25 for the Government or for the defense may have said

1 with respect to matters in evidence in the trial and
2 a question or argument or in Summation is not to be
3 substituted for your recollection of the evidence.
4

5 So, too, anything that the Court may have said
6 during the trial, or may refer to during the course
7 of these instructions as to any matter in evidence is
8 not to be taken in lieu of your own recollection.

9 Before we consider the precise charges against
10 the defendant on trial, some preliminary matters should
11 be noted.

12 When the Grand Jury returned the indictment in
13 this case, three defendants were named, Audrey Joseph,
14 James Glass, and William L. Ramsden, the defendant
15 on trial.

16 That Audrey Joseph and James Glass are not on
17 trial here is not a matter which should concern you.
18 Those are matters which are solely within the juris-
19 diction of the United States Attorney. You are to
20 draw no inference, favorable or unfavorable, against
21 the Government, or against the defendant on trial by
22 reason of the absence of Joseph or Glass. Guilt is
23 personal.

24 The guilt or innocence of this defendant on
25 trial must be determined solely on the evidence presented

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Charge of the Court

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against him, or the lack of evidence. The charges against him stand or fall on the proof or lack of proof against him, and not against those who were accused with him.

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There are certain principles of law which apply in every criminal case, and to which I made reference and emphasized at the time of your selection as jurors. I repeat them now: The indictment is merely an accusation. It is a charge and no evidence of proof of a defendant's guilt.

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You will give no weight whatever to the fact that an indictment was returned which named William L. Ramsden as a defendant.

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The defendant on trial has pleaded Not Guilty. Thus, the Government has the burden of proving the charges against him, beyond a reasonable doubt. He does not have to prove his innocence. On the contrary, he is presumed to be innocent of the accusations contained in the indictment.

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This presumption of innocence was in his favor at the start of the trial, continued in his favor throughout the entire trial, is in his favor even as I instruct you now, and remains in his favor during the course of your deliberations in the jury room. It is

Charge of the Court

removed only if and when you are satisfied the Government has sustained its burden of proving the guilt of the defendant beyond a reasonable doubt.

The question that naturally comes up is, What is a reasonable doubt. The words almost define themselves, that there is a doubt founded in reason, and arising out of the evidence in the case, or the lack of evidence. It is a doubt which a reasonable person has after carefully weighing all of the evidence. Reasonable doubt is a doubt which appeals to your reason, your judgment, your common sense, and your experience. It is not caprice, whim, speculation, conjecture or suspicion. It is not an excuse to avoid the performance of an unpleasant duty.

It is not sympathy for a defendant. If, after a fair and impartial consideration of all of the evidence in this case you can candidly and honestly say you are not satisfied of the guilt of the defendant, that you do not have an abiding conviction of his guilt, in sum, if you have such a doubt, that would cause you as a prudent person to hesitate before acting in matters of importance to yourselves, then you have a reasonable doubt, and in that circumstance, it is your duty to acquit.

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2 On the other hand, if, after such an impartial
3 and fair consideration of all of the evidence, you can
4 candidly and honestly say you do have an abiding con-
5 viction of the defendant's guilt, such a conviction
6 as you would be willing to act upon in important and
7 weighty matters of personal affairs in your own life,
8 then you have no reasonable doubt, and under such cir-
9 cumstances it is your duty to convict.

10 One final word on this subject: Reasonable
11 doubt does not mean a positive certainty or beyond all
12 possible doubt. If that were the rule, few persons,
13 however guilty they might be, would be convicted. It
14 is practically impossible for a person to be absolutely
15 and completely convinced of any controverted fact,
16 which by its nature is not susceptible to mathematical
17 certainty. In consequence, the law in a criminal case
18 is that it is sufficient if the guilt of the defendant
19 is established beyond a reasonable doubt, and not be-
20 yond all possible doubt.

21 Now, let us turn to the charges contained in
22 the indictment, which I will again read to you.

23 Count One reads:

24 "On or about the 15th day of October 1973, with-
25 in the Eastern District of New York, the defendant
Audrey Joseph, the Defendant James Glass, and the de-

Charge of the Court

7 1
2 fendant William L. Ramsden, knowingly, intentionally
3 and unlawfully did possess with intent to distribute
4 approximately four (4) ounces of cocaine hydrochloride,
5 a Schedule II Narcotic Drug Controlled Substance.

6 Count Two:

7 "On or about the 15th day of October 1973, with-
8 in the Eastern District of New York, the defendant
9 Audrey Joseph, the defendant James Glass, and the de-
10 fendant William L. Ramsden, knowingly, intentionally
11 and unlawfully did attempt to distribute approximately
12 four (4) ounces of cocaine hydrochloride, a Schedule
13 II Narcotic Drug Controlled Substance, in violation of
14 Title 21, United States Code, Section 841(a)(1).
15 (Title 21, United States Code, Section 846 and Title
16 18, United States Code Section 2.)."

17 Now, in summary, you will note first the defen-
18 dant has been charged in Count One with possession of
19 four ounces of cocaine, with intent to distribute, in
20 violation of a Federal Law known as the Drug Abuse
21 Prevention and Control Act.

22 Count One alleges that he did this with Audrey
23 Joseph and James Glass on or about October 15, 1973.

24 Second, Count Two charges the defendant with
25 attempting to possess a quantity of cocaine hydrochlor-

ide, with the intent to distribute it. The first is the possession, and the second is attempting to distribute. This is also in violation of the Federal Drug Act. Again in this Count he is alleged to have done this with Audrey Joseph and James Glass on the same date, October 15, 1973.

Now, the Congressional purpose expressed in the Drug Act was to exercise Federal control in order to prevent trafficking in or improper use of drugs having a substantial and detrimental effect on the health and general welfare of the American people.

Criminal penalties or fines or both are provided in the Act. The provisions upon which the charges in this indictment are based read in pertinent part as follows:

"Section 841(a): It shall be unlawful for any person knowingly or intentionally to possess with intent to distribute or dispense a controlled Substance.

"Section 846, Any person who attempts to commit any offense defined in this subchapter is punishable by imprisonment, fine or both."

Before I spell out what the Government must prove in order to establish violations of the foregoing statutes, there are certain terms in them which require

Charge of the Court

explanation.

Section 841 requires that the possession be done knowingly or intentionally. The purpose of the word "knowingly" is to insure that no one shall be convicted for an act done because of mistake or accident or other innocent reason.

And act is done knowingly if done voluntarily and intentionally, that is, deliberately.

A transaction is not intentional unless it is knowing, so the two words "knowingly or intentionally" may be considered together. The words were "intent distribute," "with intent to distribute," simply mean that the narcotics or Controlled Substance as it is called in the Act are not possessed for one's own personal use, but are intended for sale, delivery, transfer, or to be made another to another person. The word "possess" as used in the statute is understood in law to describe two types of possession, actual possession or constructive possession. The actual possession means that a defendant knowingly has personal, manual, physical control of drugs. Constructive possession means that although the drugs are in the physical possession of another person, a defendant knowingly has the power to exercise control over them or their

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2 distribution, that is, to set the price for their sale,
3 or to cause their delivery.

4 Finally, a word about the terms "Controlled
5 Substance." Those terms are used because the law
6 applies to a broad range of narcotic drugs and sub-
7 stances which have drug-like effects. The cocaine
8 hydrochloride referred to in the indictment commonly
9 known as cocaine is a Narcotic Controlled Substance
10 covered by Section 841.

11 I will turn to Count One, which charges the
12 defendant with possessing four ounces of cocaine with
13 intent to distribute on or about October 15, 1973.
14 Before the defendant may be convicted on that Count,
15 the Government must establish beyond a reasonable doubt
16 the following essential elements: One, that on or about
17 the date mentioned the defendant William L. Ramsden
18 in fact possessed with intent to distribute a Narcotic
19 Controlled Substance, i.e., cocaine hydrochloride.
20 When I use the word "possessed" there, it may be as I
21 said, either in the actual sense or in the construc-
22 tive sense, which I have just described.

23 Item Two, element two, that he did so knowingly
24 or intentionally.

25 Element Three, that the Narcotic Controlled

10a

Charge of the Court

Substance was in fact cocaine hydrochloride.

In considering the evidence on the foregoing elements, there are two points you should keep in mind.

GR fls

(continued on next page.)

Charge

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2 THE COURT: (Continuing) First, the Government
3 does not claim it has direct evidence that the
4 defendant Ramsden personally had possession of the
5 cocaine. Rather, it claims that the cocaine came
6 into the physical possession of the other two people
7 named in those counts, Audrey Joseph and James Glass,
8 who it claims were acting in association with the
9 defendant Ramsden, he being the one who had the
10 power to effect the distribution and sale of the
11 narcotics or otherwise exercise control over them.

12 I will tell you what I mean by direct evidence
13 and circumstantial evidence in just a moment.

14 The second point I want you to keep in mind
15 with respect to this first count is, where two or
16 more persons are charged with the commission of what
17 we call a substantive crime, that is, actually doing
18 something in violation of law, the guilt of any defen-
19 dant may be established without proof that he
20 personally did every act constituting the offense
21 charged.

22 This is so because under Section 2 of Title
23 18, United States Code, every person who wilfully
24 participates in the commission of a crime may be
25 found to be guilty of that offense.

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Charge

Section 2 reads as follows:

"Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal. Whoever wilfully causes an act to be done, which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

Under this statute, it is not even necessary that the aider or abettor be present at the actual commission of the offense.

This indictment also makes a charge under that statute as against the defendant on trial. I caution you, however, that the mere presence and guilty knowledge on the part of a person would not suffice to make him an aider and abettor. You must be convinced beyond a reasonable doubt that he was knowingly doing something to assist in accomplishing the crime.

To determine whether a defendant aided and abetted the commission of an offense, you ask yourself these questions:

Did he associate himself with the venture?
Did he participate in it, as something he wished to

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Charge

bring about? Did he seek by his action to make it succeed? If he did, then he is an aider and abettor.

Accordingly, you may find the defendant guilty of the offense of knowingly and intentionally possessing cocaine with intent to distribute it, if you find, beyond a reasonable doubt that Audrey Joseph and James Glass committed the offense and that the defendant aided and abetted them.

Now, let's turn to Count Two, which as I told you, charges the defendant along with the other two named with an attempt to distribute the same quantity of cocaine mentioned in Count One. To attempt to commit an offense means to do some act wilfully in an effort to bring about or accomplish something the law forbids to be done. In this case, the distribution of cocaine. It is not necessary that the attempt succeed. In fact, most charges of attempt to commit a crime are brought precisely because the crime failed.

An act is done wilfully, in the sense of my definition of attempt, if it done voluntarily and intentionally. Those are terms I have already explained to you. That is, with the specific intent to do something the law forbids, with a bad purpose,

Charge

in other words, to disregard or disobey the law.

With the foregoing instructions in mind, let us now turn to the evidence bearing upon the charge in the indictment.

By evidence I mean, of course, all the testimony you have heard, except any which I have instructed you to disregard. Whether that evidence is brought out on direct examination or cross-examination.

All the exhibits admitted into evidence, regardless of who introduced them and all stipulations of fact. You will recall that one of the stipulations of fact here was that Government's Exhibit 1 and the four packages which made it up were analyzed by a chemist of the Drug Enforcement Administration and found to contain a certain percentage of cocaine.

And there is also, as I recall, a further stipulation that it is undisputed that at least from the time that package of cocaine was picked up on the floor after the arrest made by Agent Siegel and found its way to the Drug Enforcement Administration and here to court, it is the same cocaine, not something else. Even though there is no dispute about that exhibit, your function as judges of the fact require you to find beyond a reasonable doubt

Charge

that the substance contained in Government Exhibit 1 is in fact cocaine hydrochloride.

If you so find, then I instruct you, as a matter of law, it would fulfill the requirement of a narcotic controlled substance as specified in the Drug Act. Since counsel for the Government and the defendant have reviewed in considerable detail the evidence in this case and emphasized their respective contentions, such comments as I make will deal with it in rather broad terms and are intended solely to assist you in focusing upon the issues of fact you will have to decide.

First, as I said a moment ago, there are two kinds of evidence, direct and circumstantial:

Direct evidence is where a witness testified to what he saw, heard and observed and what he knows of his own knowledge.

That which comes to him by virtue of his senses.

Circumstantial evidence is where facts are established from which in terms of common experience one may logically infer other facts that are sought to be established. A familiar example I often give here is this: We are in this room without windows.

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Charge

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2 When you were last outside the sun was shining
3 and for all you know, you may consider that it is
4 still shining.

5 But the door opens and in walks a man and he's
6 carrying a dripping umbrella and he's got rain on his
7 shoulders and you immediately reach the conclusion
8 that the weather has changed outside. Right?

9 That is what we mean by one fact which is
10 only circumstantial evidence leading to the con-
11 clusion you draw with respect to the condition of
12 the weather outside.

13 Circumstantial evidence, if believed, is of
14 no less value than direct evidence, for in either case
15 you must be convinced beyond a reasonable doubt of
16 the guilt of the defendant.

17 In this case, the Government relies upon both
18 direct and circumstantial evidence.

19 It contends that throughout the testimony of
20 Agent Siegel, it has, in addition to circumstantial
21 evidence, offered direct proof of the defendant's
22 participation in the alleged possession and attempt
23 to distribute cocaine as charged in Counts One and
24 Two.

25 The defendants, on the other hand, maintains
that while he was present at 251 Kane Street on th-

Charge

evening in question, he was there for an initial innocent purpose, unaware of what was going on, as he said, in the apartment upstairs.

Whether the defendant knowingly and intentionally participated with Audrey Joseph and James Glass in the substantive offenses alleged, whether he was there that evening by accident or by decide, obviously present issues of fact and questions of credibility.

Clearly, this concerns what is in a man's mind. Medical science has not yet devised an instrument whereby we can go back to the time of the occurrence of the events and determine what then was a person's intent or knowledge. These may be determined from -- only from one's acts, his conduct and surrounding circumstances and such inferences as may reasonably be drawn therefrom.

In this case, on the issue of the defendant's knowledge, you were permitted to hear tapes conversation. You remember first there were a number of telephone calls between Agent Siegel and James Glass and then later on you have heard the tape recording of the Kel set transmission that took place at the house in question, at the time certain events were

1
2 taking place.

3 As I told you, it is what you heard or were
4 able to hear on those tapes that matters, not what
5 you saw in the transcripts which were handed to you
6 for assistance in attempting to hear clearly what
7 had been said.

8 I have purposely not adverted to all the
9 evidence upon which the government and the defendant
10 rely to support their respective contentions. It
11 must be clear to you that the basic issue you have
12 to decide here is whether William Ramsden, the
13 defendant on trial, was at a house that evening by
14 accident, in the sense that he was there for an
15 innocent reason or was he there by design.

16 You have to decide whether or not, as the
17 Government alleges, and has attempted to prove
18 through the evidence offered, that he was the source
19 of Government's Exhibit 1 or whether there was some
20 other source.

21 If you cannot make up your mind on that issue,
22 you must acquit the defendant. All evidence, whether
23 or not I have referred to it or counsel have mentioned
24 it in their summations is important and must be
25 considered by you.

Charge

1
2 In anything I have said about testimony I
3 have sought to state the substance thereof with
4 complete accuracy. However, if per chance any
5 reference to testimony I may have made does not
6 agree with your recollection -- and I have stated
7 this before -- you are to disregard such references
8 by me and I emphasize this as strongly as words can
9 convey meaning -- always it is your recollection
10 and yours alone that governs and you must unhesita-
11 tingly reject any statement as to a fact which I
12 have made which does not accord with your own
13 recollection.

14 It must be apparent to you that the versions
15 of the Government and the defense are a sharp diver-
16 gence on key points and that critical issues of fact
17 and credibility are raised.

18 You are called upon to decide the fact issues
19 here. How do you decide them? Now, I think you
20 understand why at the start of the trial I suggested
21 it would be desirable and important for you not only
22 to listen but to look at the witnesses as they
23 testify.

24 Your determination of the issue of credibility
25 must depend upon the impression that a witness made

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Charge

upon you as to whether or not he was telling you the truth or giving you an accurate version of what occurred.

I often say to jurors, when you walk in the door of this courtroom and sit in the jury box, while the trial is going on and later when you are deliberating in the jury room, you have your common sense, your good experience with your. You decide whether or not a witness was straightforward and truthful, whether he attempted to conceal anything, whether he has a motive to testify falsely, whether there is any reason why he might color his testimony.

In other words, what you try to do, to use the vernacular, is to size a person up just as you would do as I have said before, in any important matters where you were undertaking to determine whether or not a person is truthful, candid and straightforward.

In passing upon the credibility of a witness you may also take into account inconsistencies or contradictions as to material facts in his own testimony or any conflict with that of another witness. A witness, however, may be inaccurate, contradictory or even untruthful in some respects and yet be

entirely credible in the essentials of his testimony.

The ultimate question for you to decide, in passing upon credibility, is, did the witness tell the truth here before you as to essential matters. The fact that a Government witness, indeed, the principal Government witness, was a Government law officer does not entitle his testimony to any greater weight or consideration than that afforded to any other witness in the case.

You will evaluate his credibility the same way you do that of any other witness. If you find that any witness == and this applies alike to Government and defense -- wilfully testified falsely as to any material fact, you have a right to reject the testimony of that witness in its entirety.

Or you may accept that part or portion which commends itself to your belief as credible. The law permits but does not require a defendant to testify in his own behalf. The defendant on trial has taken the witness stand.

Obviously, he has a deep personal interest in the result of his prosecution. Indeed, it is fair to say he has the greatest stake in its outcome. Interest creates a motive for false testimony. The

Charge

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2 Greater the interest, the greater the motive, and a
3 defendant's interest in the result of his trial is of
4 a character possessed by no other witness.

5 In appraising his credibility, you may take
6 that fact into consideration. However, it by no means
7 follows that simply because a person has a vital
8 interest in the end result, that he is not capable
9 of telling a truthful, candid and straightforward
10 story.

11 It is for you to decide to what extent, if
12 at all, his interest has affected or colored his
13 testimony.

14 The defendant has called a witness, George
15 Herzog, who testified to his character, or more
16 correctly, to his reputation in the community for
17 honesty, truthfulness and integrity. You should
18 consider such evidence, together with all the other
19 evidence in determining his guilt or innocence.

20 Evidence of good reputation may in itself
21 create a reasonable doubt, where without such
22 evidence, no reasonable doubt would exist.

23 But if from all the evidence you are satisfied
24 beyond a reasonable doubt that the defendant is guilty,
25 a showing that he previously enjoyed the reputation

Charge

1 of good character does not justify or excuse the
2 offense and you should not acquit him merely because
3 you believe he has been a person of good repute.
4

5 During the course of the trial the attorneys
6 at various times have objected to certain questions,
7 have moved to strike answers and taken other pro-
8 cedural positions before you. These are matters
9 of technical procedure that are the proper concern
10 of the attorneys and should not concern you.

11 I instruct you that you are not to draw any
12 inferences from the fact that attorneys have made
13 objections and motions before you during the trial.
14 The Government, to prevail, must prove the essential
15 elements by the required degree of proof as already
16 explained in these instructions.

17 If it succeeds, your verdict should be guilty;
18 if it fails, it should be not guilty. The verdict
19 as to each count must be unanimous. Your verdict is
20 not to be based, as I said before, on suspicion,
21 speculation, conjecture or surmise. Your function
22 is to weigh the evidence in the case and to determine
23 the guilt or innocence of the defendant solely
24 upon the basis of such evidence and these instructions.

25 Under your oath as jurors, as I mentioned.

1
2 previously, you cannot allow a consideration of the
3 sentence which may be imposed upon the defendant if
4 he is convicted to enter into your deliberations or
5 to influence your verdict in any way.

6 Your duty is to decide the case solely and only
7 upon the evidence. In the event of a conviction,
8 the duty of imposing sentence rests solely with the
9 Court.

10 Each juror is entitled to his or her own
11 opinion, but each should, however, exchange views
12 with his fellow jurors. That is the very purpose
13 of jury deliberation, to discuss and to consider the
14 evidence, to listen to the arguments of fellow
15 jurors, to present your individual views, to consult
16 with one another and to reach an agreement based solely
17 and wholly on the evidence, if you can do so without
18 violence to your own individual judgment.

19 Each one must decide the case for himself or
20 herself after consideration with his or her fellow
21 jurors. But you should not hesitate to change an
22 opinion, which after discussion with your fellow
23 jurors, appears erroneous. However, if after
24 carefully considering all the evidence and the
25 arguments of your fellow jurors you entertain a

1
2 conscientious view that differs from others, you are
3 not to yield your judgment simply because you are
4 outnumbered or outweighed.

5 Your final vote must reflect your conscientious
6 view as to how the issues should be decided. The
7 charges here are serious. The just determination of
8 this case is important to the public. It is equally
9 important to the defendant. Under your oath as jurors
10 you must decide this case without fear or favor
11 and solely, as I have stated any number of times,
12 in accordance with the evidence and the law.

13 If the Government has failed to carry its
14 burden as to the defendant, your sworn duty is to
15 acquit. If it has carried its burden as to the defen-
16 dant, you must not flinch from your sworn duty, you
17 must convict.

18 All right, members of the jury.

19 Is the Marshal here? All right.

20 I am going to let you retire to consider
21 your verdict. Juror NO. 1, as is our custom, will
22 be your foreman.

23 If during your deliberations you wish to
24 communicate with the Court, you do so by writing a
25 note and giving it to the Marshal who guards your
door.

